Supreme Court, U.S.
FILED
MAY 20 1996
CLERK

(3)

No. 95-1619

In the
Supreme Court of the United States
October Term, 1995

Mable Shangreau,

Petitioner,

vs.

Bruce Babbit, Secretary of the United States Department of Interior,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY BRIEF

BRIGGS & MORGAN, P.A.
Scott Gregory Knudson
Counsel of Record
Philip R. Schenkenberg
2200 First Nat'l. Bank Bldg.
St. Paul, MN 55101
(612) 223-6600

SOUTHERN MINNESOTA
LEGAL SERVICES, INC.
Charles H. Thomas
1302 S. Riverfront Drive
P.O. Box 3304
Mankato, MN 56002-3304
(507) 387-5588

Attorneys for Petitioner
Mable Shangreau

1996 – Bachman Legal Printing ■ (612) 339-9518 ■ FAX (612) 337-8053

7pp

TABLE OF CONTENTS

Page

ARGUMENT 1

I. RESPONDENT ADMITS THERE IS AN ABSOLUTE BAR, BUT NO ASSERTED STATE INTEREST CAN SUPPORT SUCH A BAR 1

II. THE CURRENT PROCEDURAL POSTURE OF HAAS V. CHATER DOES NOT MAKE REVIEW ANY LESS APPROPRIATE 3

CONCLUSION 5

No. 95-1619

In the
Supreme Court of the United States
October Term, 1995

Mable Shangreau,

Petitioner,

vs.

Bruce Babbit, Secretary of the United States Department of Interior,

Respondent.

PETITIONER'S REPLY BRIEF

ARGUMENT

I. RESPONDENT ADMITS THERE IS AN ABSOLUTE BAR, BUT NO ASSERTED STATE INTEREST CAN SUPPORT SUCH A BAR

Petitioner has argued that an absolute bar to intestate distribution limited in application to illegitimate children is clearly unconstitutional under unchallenged precedent of this Court. Respondent admits that WELSA operates to totally bar claims of "those who base their claim to inherit on a right of representation." Resp. at 12. Respondent also acknowledges that the total bar is limited in application to illegitimate children. Resp. at 12.

Respondent attempts to justify this total bar in two ways: First by arguing that because its application is to a subgroup, it is not a total bar, and second, by referencing various state interests to justify such a bar. The first argument is illogical, the second based on spurious state interests.

Respondent argues that WELSA is consistent with Trimble v. Gordon, 430 U.S. 762 (1977), because the statute does not deny benefits to an entire protected class, merely to a subgroup. Resp. at 12. This is an argument neither court below relied upon. What Respondent asserts is similar to suggesting that a state's grant of benefits to all men but only to women without red hair is not a gender-based total bar because some women receive benefits. To the contrary, in both cases, claimants who are denied benefits are denied them only because of their status, and are given no opportunity to overcome legislated, status-based presumptions. See App. at A-24 ("There is no dispute that . . . illegitimate children . . . are barred from inheriting by right of representation through their fathers.")(Kyle, J.). Clearly, if the statute bars all claims of a subgroup based upon status, that is a total bar under Trimble.

To justify the total bar of these claims, Respondent points to various state interests. Respondent's primary argument is that "special problems of proof" exist when an illegitimate child attempts to take by right of representation through his father. Resp. at 12. However, there is no reason why proving paternity to take from one's father (which cannot be totally barred under Trimble) is any different from proving paternity to take from one's grandfather (which is totally barred under WELSA). The fact to be proven -- paternity -- is the same, and in neither case is the putative father alive. There are simply no "special problems of proof" peculiar to inheritance by right of representation, and certainly no problems that would justify a total bar of all such claims. If precluding the

proof of the fact in the former case is unconstitutional it must be unconstitutional here.

Respondent identifies other state interests to justify this total bar; these arguments fail to withstand cursory analysis. Respondent asks for the judicial deference appropriate when issues of title to land are implicated (Resp. at 11) without disputing that in this case Congress quieted title to the land within the statute itself, and thus title concerns are absent. Respondent calls upon the state interest in providing for the just and orderly disposition of property at death (Resp. at 11) without disputing that Petitioner had timely filed a claim in the orderly administrative procedure set forth by Congress in WELSA, and thus these concerns are absent as well. Respondent warns of possible spurious claims (Resp. at 11) even though paternity was indisputably established long before WELSA was even passed.

Respondent cannot get out from under the facts of this case: For administrative efficiency reasons, Congress gave Petitioner no opportunity to prove her entitlement solely because of her son's illegitimacy. As hard as Respondent tries, Respondent has identified no government interest at issue in this case that is further by a total bar of all claims. This legislative scheme unnecessarily excludes those illegitimate children (like Petitioner's son) whose rights can be recognized without jeopardizing any state interests. See Trimble, 430 U.S. at 771. Under clear precedent of this Court, this absolute bar is unconstitutional. Summary reversal is appropriate in this case.

II. THE CURRENT PROCEDURAL POSTURE OF HAAS V. CHATER DOES NOT MAKE REVIEW ANY LESS APPROPRIATE

Respondent points out that the Seventh Circuit recently vacated its opinion in Haas v. Chater, 79 F.3d 559 (7th Cir.

1996) en route to rehearing *en banc*. This fact does not, however, make the present case less worthy of review. The opinion in that case served to highlight the conflicts in the circuits as to whether a state statute is unconstitutional if, as applied, it makes proof of paternity impossible in the federal social security context. Id. at 563. That conflict, which this Court can resolve by granting review, will still exist regardless of the outcome of Haas after en banc review in that court.

In addition, to resolve Haas v. Chater the Seventh Circuit will need to decide the degree to which a state can burden an illegitimate child to further its interest in the orderly disposition of property. Compare id. at 565 (Posner, J.) with id. at 571 (Wood, J., dissenting). That is exactly the question presented in the instant case. Thus, both cases require an analysis of the principles of Lalli v. Lalli, 439 U.S. 259 (1978), in light of the later jurisprudence of Clark v. Jeter, 486 U.S. 456 (1988). The ultimate resolution of Haas by the Seventh Circuit will merely add to the existing confusion in the circuits. If the Court does not find this case to be an absolute bar indistinguishable from Trimble, this Court should accept plenary review to clarify the conflicting decisions for the benefit of both the Petitioner and the claimant in Haas.

CONCLUSION

Respondent's brief concedes that Petitioner was absolutely barred from proving her claim solely because her son was illegitimate. The purported state interests relied upon by Respondent are interests absent from this case. This case is indistinguishable from Trimble and thus should be summarily reversed. If summary reversal is not granted, the Court should accept plenary review to resolve the conflicting decisions in this area -- conflicts that exist despite the current procedural posture of Haas v. Chater.

Dated: May 22, 1996

Respectfully submitted,

BRIGGS AND MORGAN, P.A.
SCOTT GREGORY KNUDSON
Counsel of Record
PHILIP R. SCHENKENBERG
2200 First National Bank Building
Saint Paul, Minnesota 55101
612-223-6600

SOUTHERN MINNESOTA REGIONAL
LEGAL SERVICES, INC.
CHARLES H. THOMAS
1302 S. Riverfront Drive
P.O. Box 3304
Mankato, Minnesota 56002-3304
507-387-5588